

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

This the _____ day of _____, 2021

HON'BLE MRS. JUSTICE VIJAY LAKSHMI, MEMBER-J
HON'BLE MR. DEVENDRA CHAUDHRY, MEMBER-A.

ORIGINAL APPLICATION NO. 330/01561/2017

Amresh Kumar, aged about 45 years son of Sri Ram Sagar, r/o Vill-
Paramhans Nagar, PO- Kandwa, DLW, District- Varanasi-221106.

.....Applicant

By advocate: Sri Vikas Budhwar proxy for Sri V.K.Singh

V E R S U S

1. Union of India through the General Manager, Diesel Locomotive Works, Varanasi.
2. Chief Design Engineer (CDE), Diesel Locomotive Works, Varanasi.
3. Deputy Chief Mechanical Engineer/ Loco, Diesel Locomotive Works, Varanasi.
4. Chief Mechanical Engineer/Production, Diesel Locomotive Works, Varanasi.
5. Sri S.K. Katiyar, The then CME (Plant), Diesel Locomotive Works, Varanasi.
6. Sri Mahesh Pratap , Previous Inquiry Officer, Works Manager/Loco, Diesel Locomotive Works, Varanasi.
7. Sri Nitin Mehrotra, Subsequent Inquiry Officer, Deputy Chief Mechanical Engineer/Engine, Diesel Locomotive Works, Varanasi.

..... Respondents

By Advocate: Sri Rishi Kumar

ORDER

By Hon'ble Mrs. Justice Vijay Lakshmi, Member (J)

By means of the instant OA, the applicant has prayed the following reliefs: -

- i) Issue an order or directions to the respondents to call for the records pursuant to which the orders impugned dated 26.3.2016, 30.4.2016 and 28.9.2016 has been passed by the respondent No. 3,2 & 1 respectively and quash the same.
- ii) Issue a further orders or directions commanding the respondents to reinstate the applicant in service with full back wages and all other consequential benefits

- iii) Issue any other and further orders or directions, which this Hon'ble Court may deem fit and proper in the circumstances, existing in the present case.
- iv) Award the cost o the Original Application to the applicant.

2. We have heard learned counsel for the parties at length. Both the Ld. Counsels have filed written submissions also. We have perused their written submissions and the record.

3. At the very outset, Mr. Vikas Budhwar, learned counsel for the applicant submitted that the case of the applicant is identical and same viz-viz the case of Amar Singh Vs. Union of India &Ors – OA No. 330/407/2017 decided on 12.12.2017, whereby this Tribunal had set aside all the impugned orders i.e. the order passed by Disciplinary Authority, Appellate Authority and Revisional Authority. Copy of the said judgement has been filed by the learned counsel for the applicant as Annexure-C to the written submissions. It has been submitted that admittedly, a common charge-sheet was issued on 24.11.2009 against 7 persons, whereby same charges were levelled against the applicant along with six others. Amar Singh, the applicant in the aforementioned OA, was also one amongst them. Therefore, the applicant's case being similar to the case of Amar Singh (Supra), the applicant is also entitled to the same relief.

4. Learned counsel for the respondents Sri Rishi Kumar, in reply to the aforesaid submission of the applicant's counsel, has contended that the reliefs sought in OA No 407/2017 and in the instant case are different. However, he has not denied the fact that by the same charge-sheet, the applicant along with six others was subjected to the disciplinary proceedings.

5. In order to come to a right conclusion regarding the controversy involved in this OA, it is necessary to mention the relevant facts in brief.

6. The applicant along with six other employees of DLW, Varanasi, was served with a charge-sheet dated 24.11.2009 by the respondent no. 3 under Railway Servants (Discipline & Appeal) Rules, 1968 (hereinafter referred to as DAR) for committing various acts of misconduct. The charge memo is reproduced below: -

“fnukd 10-11-2009 dks l qg yxHkx 09&00 cts l oZh ¼¼½ vej fl g l oZh ½byfDVf’k; u & II/TAS d0 l 15318¼ l oZh ½½ l qkkaq d’ekj frokjhl l oZh ½e’khuLV II/TAS d0 l 13038¼ ½½ l rks’k id kn ‘k’pyk ¼QVj & I/SAS d0 l 11460¼ ¼¼½ jesk d’ekj JhokLro ½byfDVf’k; u & III/TAS d0 l 15345¼ ½½ vejsk d’ekj ½byfDVf’k; u & II/Colony, d0 l 12895¼ ½½ deysk d’ekj fl g ½e’khuLV & II/Tool Room, d0 l 15380¼ ¼¼½ enu d’ekj ½byfDVf’k; u & I/TAS d0 l 15323½ us, d= gkdj d’ekj vl; d’ekj; ks dh vxq’kbZ dh vlg TAS “kkk ea tkdj ogk’Wds d’ekj; ka dks dk; Z djus l s jkdka ftu d’ekj; ka us dk; Z jkdus dk i frjkd fd; kj mlgscyid d; LFky l sgVk fn; ka fQj mijkDr 7 d’ekj; ks dh vxq’kbZ ea vl; d’ekj; ks dh HkhM+ us LAS, LFS, Engine Erection Shop, LMS, HWS, Tool Room vkfn ‘kki ka ea tk&tkdj d’ekj; ka dks dk; Z djus l s tcju gvK; ka bl ds ckn mDr 7 d’ekj; ks dh vxq’kbZ ea ; g l e’g vl; d’ekj; ks dh Mhjdj d’ekj [kkus ds imhZ x’/ ds ikl ys x; k ukjckth djrs jgA ml le; rRdkyhu e’; ; ka=d b’atfu; j ¼mRiknu½ Jh l at; d’fV; kj us HkhM+ l s ckr djus dh d’ek’k dh i jlrq bu ykxks us mudh ckr ugha l qh vlg yxkrkj ukjckth djrs jgA tc Jh d’fV; kj ogk’W l s tkus yxsrks bu ykxks dh vxq’kbZ ea HkhM us mudk jkLrk jkdj vlg tkus l s c’f/kr fd; ka d’ekj; ka us mlgA jkdus ds fy, muds l kFk /kDdk e’qdh Hkh dhA

yxHkx 13-20 cts mDr 7 dh vxq’kbZ ea bl l e’g us MRS ea tkdj cyid eu ikj l lykbZ dks cn dj fn; kj ogk’Wij r’ukr lk; b’ekdka ds l kFk /kDdk e’qdh dh vlg mlgscg j ?kl hVka

mDr 7 d’ekj; ka dh vxq’kbZ ea l Hkh ‘kki ka ea HkhM }kj tk&tkdj vl; d’ekj; ka dks dk; Z djus l s jkdus dk d’ek’k 10-11-2009 l s 13-11-2009 ds imhZ rd pyr jgA

bl idkj l oZh ½byfDVf’k; u & II/TAS d0 l 15318¼ l oZh ½½ l qkkaq d’ekj frokjhl l oZh ½e’khuLV II/TAS d0 l 13038¼ ½½ l rks’k id kn ‘k’pyk ¼QVj & I/SAS d0 l 11460¼ ¼¼½ jesk d’ekj JhokLro ½byfDVf’k; u & III/TAS d0 l 15345¼ ½½ vejsk d’ekj ½byfDVf’k; u & II/Colony, d0 l 12895¼ ½½ deysk d’ekj fl g ½e’khuLV & II/Tool Room, d0 l 15380¼ ¼¼½ enu d’ekj ½byfDVf’k; u & I/TAS d0 l 15323½ us jy l ok vkpj.k fu; e ds fu; e 3 ¼¼¼ ¼¼¼ ¼¼¼, oa ¼¼¼ dk mYy’ku fd; ka

7. On the basis of the aforementioned misconducts, the following seven charges were levelled against each of the above named 7 employees: -

“1 Stopping the other employees in the Shop from performing their duties on 10.11.2009, 11.11.2009 & 12.11.2009.

2. Unauthorized absence on 10.11.2009 & 11.11.2009.

3. Illegally stopping the power supply on 10.11.2009 at 13.08 Hrs.
4. Switching off the light and disrupting the power supplies on 10.11.2009 & 11.11.2009.
5. On being asked to provide master roll/attendance register by engine and block division the applicant administered threat and attempted to manhandle them.
6. Despite the fact that the applicant was under suspension, he stopped other employees of the workshop from performing their duties on 12.11.2009.
7. On 10.11.2009 he forcibly stopped the Chief Mechanical Engineering/ Production from returning to his house from the Workshop.”
8. The Inquiry Officer, after conclusion of the enquiry, submitted the inquiry report on 07.04.2015, (Annexure A-23 of OA) and held as under: -
 1. Article 1- Proved
 2. Article 2- not proved
 3. Article 3- not proved.
 4. Article 4- not proved
 5. Article 5- not proved
 6. Article 6 – not proved
 7. Article 7- proved. “
9. Thus, only charges/Article Nos 1 and 7 were found proved by the Inquiry Officer. However, the disciplinary authority did not agree with the report of Inquiry Officer in respect of charge no. 2 and held the applicant guilty in respect of charge no. 2 also.
10. After holding the applicant guilty, the disciplinary authority imposed the punishment of removal from service “with immediate effect” vide impugned order dated 26.03.2016 (Annexure A-1 of OA).

11. The applicant filed a departmental appeal on 31.03.2016, in which he challenged the legality of order passed by the disciplinary authority on the ground that without any disagreement note, being prepared or without supplying its copy to the applicant and without giving the applicant an opportunity of hearing, he has been held guilty by the disciplinary authority.

12. The grievance of the applicant is that even the Appellate Authority, without taking into consideration the aforesaid objection raised by the applicant, dismissed his appeal by the impugned order dated 30.04.2016 (Annexure A-2 of OA). The applicant filed a revision against the dismissal of his appeal before the Revisionary Authority. However, his revision was also dismissed vide impugned order dated 28.09.2016 (Annexure A-3 of OA) without considering the objections raised by the applicant.

13. Learned counsel for the applicant has vehemently contended that when the charge no. 2 was not found proved by the Inquiry Officer, the disciplinary authority, while disagreeing with the view of the Inquiry Officer and while finding charge no. 2 as proved against the applicant, should have issued a disagreement note and should have supplied its copy to the applicant in order to provide him an opportunity of hearing.

14. In this regard, learned counsel for the applicant has drawn our attention to Rule 10(2)(a) of DAR, which stipulates as under: -

“The disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any articles of charge, record its tentative reasons for such disagreement and require the Railway servant to submit his written representation or submission to the DA. “

15. In this regard, learned counsel for the applicant has placed reliance on the following judgements of Hon'ble Apex Court: -

a) Punjab National Bank Vs. Kunj Behari Mishra (1998) (7) SCC 84.

b) 1999 (7) SCC 739 Yoginath D. Bagde Vs.State of Maharashtra para 30 & 33.

16. The photo copy of the judgment dated 12.12.2019 passed in O.A. No. 330/00407/2017 (Amar Singh Vs. Union of India and others) which was similar matter of the co-chargesheeted employee, has also been filed as Annexure No. C to this written submission by learned counsel for the applicant.

17. On the aforesaid grounds, learned counsel for the applicant has prayed that the OA be allowed in the same terms as of OA No. 407/2017 – Amar Singh Vs. UOI &Ors.

18. Respondents in their counter reply, have not denied the fact that a common disciplinary proceeding was initiated against seven employees in furtherance of which, major penalty of removal from service with immediate effect was imposed on all of them. There is also no denial of the fact that the disagreement note was never prepared by the disciplinary authority, therefore, there was no question of supplying its copy to the applicant. However, learned counsel for the respondents has contended that there was no violation of principle of natural justice and opportunity of hearing was given to the applicant.

19. With regard to the contention, that the applicant, being a similarly placed employee, as Amar Singh, who had earlier approached this Tribunal by means of OA No. 407/2017, is also entitled for same treatment, the learned counsel for the respondents has contended that the relief claimed by the applicant is slightly different from the relief claimed by Amar Singh.

20. However, a perusal of the relief claimed by Amar Singh, which has been reproduced by the learned counsel for the

respondents in written submissions, shows that there is no material difference between the two and the facts of both the OAs are almost similar, the charge-sheet being the same.

21. This Tribunal while deciding the aforesaid OA No. 407/2017 (Amar Singh Vs. Union of India and others), came to the following conclusion:

“the disciplinary authority failed to issue a note of disagreement indicating tentative reasons for which he did not agree with the report of Inquiry Officer. The disciplinary authority should have sought representation of the applicant against his disagreement note and after considering his representation, the penalty should have been imposed. Thus, there was violation of Rule 10 by the Disciplinary Authority in not communicating the reasons for his disagreement with the Inquiry Officer and imposing the punishment upon the applicant.”

Accordingly, it set aside the impugned order dated 26.03.2016 passed by the disciplinary authority. Consequently, the appellate order dated 30.04.2016 and revisional order dated 28.09.2016 were also set aside by this Tribunal and the respondents were directed to proceed with the disciplinary proceeding after supplying a copy of disagreement note to the applicant to enable him to submit his defence. The respondents were further directed to conclude the disciplinary proceeding in accordance with law in a time bound manner.

22. It is pertinent to mention that while deciding the aforementioned O.A., a slight difference of opinion arose between the Judicial Member and the Administrative Member, hence a third Member reference was made under Section 26 of the Administrative Tribunals Act, 1985, which was registered as MA No. 181/2019 and it was decided vide order dated 12.12.2019. While deciding the reference, it was held by the third Hon'ble Member that he fully concurs with the finding of Hon'ble Member (Judicial) and the two paragraphs recorded by the Hon'ble Member (Administrative) need not be given any effect. It was further held

that the department can proceed with the disciplinary proceedings after supplying copy of the disagreement note to the applicant.

23. There is no reason to differ with the judgment of aforesaid O.A., the facts being identical. The judgment cited by the learned counsel for the applicant fully supports the case of the applicant and the conclusion arrived earlier by the coordinate Bench of this Tribunal. Hon'ble Apex Court in the case of **Punjab National Bank (Supra)** has held as under:

“Principal of natural justice will have therefore to be read into Regulation 7(2). Whenever the disciplinary authority disagrees with the enquiry authority on any article of charge then before it records its findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its finding. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer”

24. Likewise, Hon'ble Apex Court in the case of Yogi Nath (Supra), while relying on the law laid down in the case of **Punjab National Bank Vs. Kunj Behari (supra)** has held as under:

“...requirements of affording opportunity of hearing, as laid down in Kunj Behari Misra case, being in consonance with Art. 311 (2) and being a constitutional right to be heard, has to be read into a rule which does not makes specific provision to this effect. Disciplinary Authority before forming its final opinion, has to convey to charged employee its tentative reasons for disagreeing with the findings of the Enquiry Officer. Show cause notice issued in the present case to appellant with regard to proposed punishment, held, did not meet requirement of the law because final decision to disagree with the Enquiry Officer had already been taken before issuing show cause notice.”

25. In view of the above discussion, the present O.A. is disposed off in the same terms as in OA No. 330/407/2017 – Amar Singh Vs. Union of India & Ors, with a direction to the respondents authority to proceed with the disciplinary enquiry after supplying copy of Disagreement Note to the applicant to enable him to submit his defence in a time bound manner and to conclude the enquiry proceedings, in accordance with law, as expeditiously as possible, preferably within a period of 8 months from the date of receipt of certified copy of this order, which shall be made available to them by their Id. Counsel..

26. No order as to costs.

(DEVENDRA CHAUDHRY)
MEMBER (A)

(JUSTICE VIJAY LAKSHMI)
MEMBER (J)

HLS/-